FILED
JUL 21 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-703

UNITED STATES OF AMERICA,
Appellant,

v.

FIRST NATIONAL BANCORPORATION, INC. and
THE FIRST NATIONAL BANK OF GREELEY,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

ANSWER OF APPELLEES TO BRIEF AS *AMICUS CURIAE* FOR THE NEW YORK STATE BANKING DEPARTMENT

EUGENE J. METZGER
One Farragut Square South
Washington, D.C. 20006
Attorney for Appellees

EDWARD B. CLOSE, JR.
Hughes & Dorsey
401 First National Bank Building
Denver, Colorado 80202
Attorney for First National Bancorporation, Inc.

Of Counsel:
CARL W. SCHWARZ
MARK W. HAASE
Metzger, Noble,
Schwarz & Kempler
One Farragut Square South
Washington, D.C. 20006

Washington, D.C. • THIEL PRESS • (202) 393-0625

TABLE OF CONTENTS

Page

TEXT 1

APPENDIX A 1a

TABLE OF CITATIONS

Administrative Decisions (with cross-reference to case number designations assigned to each case by the *amicus curiae* brief filed herein by the former Superintendent of Banks of the State of New York):

BT New York Corporation and Liberty National Bank Buffalo (denial of proposed holding company affiliation), 1967 Fed. Res. Bull. 769 (Case 12) 12a

Bankers Trust Company, New York City, and The County Trust Company, White Plains (denial of proposed holding company affiliation), Annual Report, 1961, Superintendent of Banks of the State of New York, p. 44 (Case 1) 1a

Bankers Trust New York Corporation and Union National Bank of Troy (denial of proposed holding company affiliation), Annual Report, 1970, Superintendent of Banks of the State of New York, p. 74 (Case 16) 16a, 17a

Charter New York Corp., 1970 Fed. Res. Bull. 294 ..... 14a

Charter New York Corporation and Central Trust Company, Rochester (denial of proposed holding company affiliation), 1968 Fed. Res. Bull. 925 (Case 14) 14a

Charter New York Corp. and Hempstead Bank (denial of proposed holding company affiliation), Annual Report, 1970, Superintendent of Banks of the State of New York, p. 111 (Case 17) 17a

Chase Manhattan Bank, New York City, and Hempstead Bank (denial of proposed merger), 1962 Fed. Res. Bull. 544 (Case 3) 3a

Chemical Bank, New York City, and First National Bank in Yonkers (denial of proposed merger), Annual Report, 1965, Superintendent of Banks of the State of New York, p. 25, and Press Release, New York Banking Department, April 22, 1965 (Case 11) 12a

Chemical Bank New York Trust Company, New York City, and Long Island Trust Company, Garden City (denial of proposed merger), 1962 Fed. Res. Bull. 548 (Case 4) 4a, 5a

County National Bank, Middletown, and National Bank of Port Jervis (denial of proposed merger), Annual Report, 1962, Comptroller of the Currency, p. 153 (Case 9) 10a

First National City Bank, New York City, and National Bank of Westchester, White Plains (denial of proposed merger), Annual Report, 1962, Comptroller of the Currency, p. 138 (Case 2) 2a

Manufacturers and Traders Trust Company of Buffalo, et al. (denial of proposed new holding company affiliation), 1969 Fed. Res. Bull. 738 (Case 15) 15a

Manufacturers and Traders Trust Company of Buffalo and Bank of Jamestown (denial of proposed merger), Annual Report, 1964, Superintendent of Banks of the State of New York, p. 19 (Case 10) 11a

Manufacturers and Traders Trust Company, New York City, and State Bank of Newfane (denial of proposed merger), Press Release, New York State Banking Department, April 21, 1961 (Case 8) 10a

Marine Midland Banks and First Westchester National Bank, New Rochelle (denial of proposed holding

company affiliation), Annual Report, 1967, Superintendent of Banks of the State of New York, p. 50 (Case 13) 13a, 14a

Marine Midland Corporation, Buffalo, and Security National Bank of Long Island, Huntington (denial of proposed holding company affiliation), 1962 Fed. Res. Bull. 1597 (Case 5) 6a

Morgan Guaranty Trust Company of New York City, et al. (denial of proposed holding company affiliation), 1962 Fed. Res. Bull. 567 (Case 6) 7a

State Bank of Albany and Fulton County National Bank, Gloversville (denial of proposed merger), Press Release, New York State Banking Department, July 13, 1961 (Case 7) 9a

Miscellaneous:

American Bank Directory, Spring, 1972 . . . . . 10a

Census of Population, 1970, Bureau of the Census, U.S. Department of Commerce 3

Kohn, Ernest, and Carlo, Carmen J., *Potential Competition: Unfounded Faith or Pragmatic Foresight*, New York State Banking Department, 1970 . . . . . *passim*

Moody's Bank & Finance Manual, 1968 . . . . . 9a, 14a

Moody's Bank & Finance Manual, 1970 . . . . . 11a

Moody's Bank & Finance Manual, 1971 . . . . . 9a

Moody's Bank & Finance Manual, 1972 . . . . . *passim*

Polk's Bank Directory, Mar. 1961 . . . . . 1a

Polk's Bank Directory, Mar. 1962 . . . . . 4a, 5a

Polk's Bank Directory, Mar. 1967 . . . . . 14a

Polk's Bank Directory, Sept. 1969 . . . . . 16a, 17a

Polk's Bank Directory, Mar. 1972 . . . . . *passim*

Summary of Accounts and Deposits in All Commercial Banks, Jun. 30, 1970, Federal Deposit Insurance Corporation 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-703

UNITED STATES OF AMERICA,

Appellant,

v.

FIRST NATIONAL BANCORPORATION, INC. and THE FIRST NATIONAL BANK OF GREELEY,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

ANSWER OF APPELLEES TO BRIEF AS *AMICUS CURIAE* FOR THE NEW YORK STATE BANKING DEPARTMENT

The instant case involves the proposed acquisition by a holding company (Bancorporation) of a single office bank in Greeley, Colorado, the only bank in that community (a town of 38,000 people) presently available for purchase. The holding company has no banking offices within 40 miles of Greeley, an isolated agricultural and college town; it has denied that it would attempt to enter the market by new charter; it may not, under State law, branch; there are no other banks in Greeley presently available for sale; and the Regional Administrator of National Banks has represented that he

would not grant an application for a new charter should one be made.

The former Superintendent of Banks of the State of New York has filed an Amicus brief[1] citing 17 cases of regulatory denial of acquisitions in New York State and subsequent actions of banks in those markets[2] which, he contends, demonstate that Bancorporation, if denied this affiliation, would, despite the representations cited above, enter the Greeley market *de novo*.

The brief of the former Superintendent does not call our attention to any claim by the acquiring institutions that they would not enter these markets by alternate routes should the affiliations in question be denied nor to representations by the appropriate regulatory agencies that they would reject such alternate entry attempts. It would seem that, absent such representations, the experience of New York banks–which we believe differs markedly from the former Superintendent's contentions– is not relevant to this case. We will, however, discuss them as if relevance had been established.

Three of these cases (#7, 8 and 9 in his listing) admittedly involved actual competition between banks in the same market areas and were denied on such grounds. Their inclusion in a discussion of potential competition is wholly inapposite.

---

[1]Appellees herein have already expressed their strenuous objections to responding to massive contentions of fact at an appellate level. The Court is respectfully referred to the "Answer of Appellees to Brief for the Federal Deposit Insurance Corporation as Amicus Curiae", at pp. 4-5, and to the "Objection of Appellees to the Motion of the New York State Banking Department for Leave to File Brief Amicus Curiae"on the question whether the former Superintendent ought to be heard at all.

[2]A more complete before and after factual analysis of these cases is appended to this brief.

Eight of these cases (#1, 2, 3, 4, 5, 11, 13 and 17) involved attempts by New York City banks to follow their customers into the New York City suburbs of Nassau, Suffolk or Westchester counties after the state banking laws were changed to permit branching into New York City suburbs by New York City banks. Although all these cases involved banks with offices already fairly close and in some cases in actual competition, the most striking distinction is that each of these suburban counties involve population and deposits in excess of all of Colorado outside the Denver SMSA.[3] It seems to Appellees that a determination by the big New York City banks not to be excluded from markets of such enormous size and scope, into which they could still branch or merge or charter in many areas, sheds little light on the likelihood of Bancorporation seeking a new charter in a single town of 38,000 people.

In cases 10 and 12 there were no changes whatsoever in the banks in the relevant market. In 10, a large banking organization with offices in one end of a county proposed to acquire a banking organization with offices at the other end of that county, more than 25 miles away. Admittedly they were not in competition. Subse-

---

[3]

County	*Deposits (000)**	*Population (1970 Census)*
Nassau	$3,163,050	1,422,905
Suffolk	1,626,352	1,116,672
Westchester	1,823,589	891,409
Colorado, excluding Denver SMSA	1,407,128	979,703

**Summary of Accounts and Deposits in all Commercial Banks*, June 30, 1970, Federal Deposit Insurance Corporation.

quent to the disapproval, the bank to be acquired was acquired by another billion dollar organization. Neither organization has opened offices in the other's service area. In case 12, a large banking organization proposed to acquire a bank with offices in one end of a county. This was denied and the first bank acquired a bank at the other end of the county. Similarly, no new offices have been opened in the other's service area. No competition previously existed, nor has any since been initiated. We fail to understand what light these cases shed on the likelihood that Bancorporation would seek alternate entry into Greeley.

Similarly, in case 15, 4 widely separated banks in upstate New York proposed to form a holding company. The nearest offices of any of them were 50 miles apart. Subsequent to the denial of their affiliation, two of them formed a holding company with each other, and one merged with a large New York City bank. None of them has opened offices in any area served by the other. The competitive mix in each market remains unchanged. Again, we fail to understand what light this sheds on the likelihood that Bancorporation would seek alternate entry into Greeley.

In case 14, a large banking organization proposed to acquire a $191 million deposit bank in the Rochester area. It was allowed to acquire 12 of the offices of that bank and $158 million in deposits. The remaining 4 offices were sold to another large banking organization. Although two organizations resulted where there had been one before, the case has no apparent relation to potential competition at all and equally appears to be of no assistance in a discussion of a proposed acquisition of a unit bank.

In case 16, a large banking organization with 9 offices in Albany County proposed to merge with a bank with 6 offices in adjoining Rensselaer County. Both counties are in the Albany SMSA and all but one of the parties' 15 offices in the SMSA were within 7 miles of a point midway between Albany and Troy. There was already a strong element of actual competition. After the merger was rejected, the Rensselaer County bank merged with another large banking organization and did, in fact, open an office in Albany. This again, however, is a case reminiscent of the New York City cases discussed above. The Albany SMSA is a large metropolitan area involving a deposit pool ($1.8 billion) larger than all of Colorado outside the Denver SMSA and a population (720,786) almost as large. Again, it seems to appellees that a determination by a big New York City bank (here Irving Trust) not to be excluded from markets of such enormous size and scope into which it could still branch or merge or charter in many areas sheds little light on the likelihood of Bancorporation seeking a new charter in a single town of 38,000 people.

In case 6, a major New York City bank, Morgan Guaranty, proposed to form a holding company with six leading banks in upstate New York markets. It was denied. Of the 42 possible permutations and combinations (each of the 7 could have entered the markets of each of the other 6) only two have subsequently come to pass in the ten years since the initial denial. Lincoln First entered Syracuse in 1967 by acquiring the $191 million deposit Lincoln National Bank & Trust Company of Central New York and First Empire (Manufacturers and Traders Trust) has recently entered New York City by acquiring the $136 million Hambro American Bank & Trust Company. *None* has entered the market of another

via new charter, the only route open to Bancorporation here. We believe that this case does shed some light on the likelihood of *de novo* entry of Bancorporation into Greeley but *not* in support of the thesis advanced by the former Superintendent of Banks.

Appellees do not deny the value of the doctrine of potential competition in antitrust enforcement generally or specifically in banking. Nor do we deny that the public interest standards of the federal and various state bank regulatory agencies give the supervisory agencies very broad powers to structure banking along lines which encompass the branching, chartering, merging and general supervisory powers of these agencies—powers which, of course, are far more comprehensive than the essentially negative function of the Clayton Act.

What we do challenge is the contention that alternate entry (in a few of these cases) by major organizations into markets bigger and richer than all Colorado outside metropolitan Denver, where diverse branching, merging and chartering opportunities are available, aids this Court in resolving the question of whether Bancorporation is likely to seek a new charter in a single rural town.

Respectfully submitted,

EUGENE J. METZGER
EDWARD B. CLOSE, JR.
Attorneys

July, 1972

APPENDIX

APPENDIX A

This Appendix presents each of the 17 case studies of which the amicus curiae brief of the former Superintendent of Banks of the State of New York is comprised. It is offered to establish that upon careful analysis, none of the cases clearly supports the central proposition advanced by the former Superintendent—*viz.*, that in 17 of 23 denials of proposed bank affiliations arising in the State of New York between 1961 and 1970, "*potential* competitors have within a relatively short time become *actual* competitors of the local banks they sought and were unable to acquire" (Sup't. Br. at 6)—*most* are indifferent to the proposition and *some* suggest a clear negative.

Case 1 – *Holding Company Affiliation Involving Bankers Trust Company, New York City, and The County Trust Company, White Plains*, denied by N.Y. Superintendent of Banks (*Annual Report*, 1961, N.Y. Superintendent of Banks, p. 44).

The proposed affiliation involved the $3.1 billion asset Bankers Trust and the one-half billion dollar asset County Trust, which had 40 offices in Westchester County (*id.* at 53, 54). Bankers Trust had 10 offices in the Bronx, contiguous to Westchester, and the nearest offices of the two banks were about 5 miles apart (*Polk's Bank Directory*, March 1961). The Superintendent's opinion called attention to the recent State law which permitted branching from New York City into Westchester County and that "implicit in the statute is the recognition given to movements in population and business from cities to suburban areas." (*Id.* at 52-53). "Some 40% of Westchester residents commute regularly to New York City . . . . About 70 percent of Westchester residents live

within 10 miles of New York City, and important business relationships exist involving the movement of goods and services between New York City and Westchester." (*Id.* at 54).

That Bankers Trust, absent the affiliation, would accept the legislative invitation to branch outward within the metropolitan area into Westchester County – a course previously denied it – thereby following commuters into the suburbs, was obvious. This did in fact occur, and Bankers Trust currently operates 9 offices in Westchester, eight of which resulted from its 1968 merger with Northern Westchester National Bank. (Kohn and Carlo, *Potential Competition: Unfounded Faith or Pragmatic Foresight*, at 12; *Polk's Bank Directory*, Mar. 1972).

Case 2 – *Merger of First National City Bank, New York City, and National Bank of Westchester, White Plains*, denied by Comptroller of the Currency (*Annual Report*, 1962, Comptroller of the Currency, p. 138).

First National City Bank, with assets of $8 billion was a New York City bank which, at the time of the denial, had two authorized but unopened branches in Westchester (*id.* at 138). National Bank of Westchester, with $271 million in assets, operated 26 offices in Westchester County (*id.* at 139). Like Case No. 1 above, the Comptroller's opinion alludes to the newly enacted New York law which permitted branching from New York City into Westchester and the population movements which passage of the law recognized:

> "It is desirable and in the public interest that New York City banks be permitted to branch in the suburban portions of the metropolitan area. Banks

like other businesses should be permitted to follow their customers to the suburbs. As our society changes so must every business desiring to maintain its position and achieve its growth potential change also. One of the serious problems in banking today arises from legal restrictions, many of which were designed for an earlier age, which have hampered the proper accommodation by banks to the changing nature of our society, and have inhibited not only their growth, but their ability to serve efficiently our growing economy. Removal of the restrictions on New York City banks branching in Westchester and Nassau Counties shows recognition of these problems at the State level." (*Ibid.* at 140).

Again:

"There is no doubt that the larger New York City banks are today actively seeking out acceptable branch sites in Westchester and Nassau Counties. Gradually, as the population shifts to what are now the lesser populated sections of the county, acceptable branch sites will be located, supervisory approval secured, and branches established." (*Ibid.* at 141).

First National City Bank now operates 21 branches in Westchester County (Sup't Br. at 10). The National Bank of Westchester, on the other hand, has affiliated with a holding company but has not entered New York City (*Moody's Bank & Finance Manual*, 1972).

Case 3 – *Merger of Chase Manhattan Bank, New York City, and Hempstead Bank*, approved by N.Y. Superintendent of Banks, later denied by the Federal Reserve Board (1962 Fed. Res. Bull. 544).

Hempstead Bank maintained its 15 offices in Nassau County. Chase, with $8.9 billion in deposits and 120 offices, already had two offices in Nassau County as well as 28 offices in neighboring Queens (*id.* at 545, 547; *Polk's Bank Directory*, Mar. 1962). Chase had an "already strong position . . . in Nassau County . . . Chase . . . has developed a volume of deposits and loans originating in Hempstead Bank's service areas which is almost half as much as Hempstead's deposits and loans." (*Id.* at 547). One of Chase's existing Nassau branches was but one mile from one of Hempstead Bank's offices. (*Ibid.*) As noted (Cases 1 and 2 above), the 1960 changes in New York law enabled New York City banks, like Chase, to follow their customers into the suburbs and grow with the expanding metropolitan area. Subsequent to the denial of its proposed affiliation with Hempstead Bank, Chase has increased the number of its Nassau County branches from two to ten (Sup't Br. at 11). Hempstead Bank has not branched into Queens (*Polk's Bank Directory*, Mar. 1972). Competition between the two banks has increased in conformance with a pattern established prior to the merger denial. Neither bank has been responsible for any change in the number of competitive alternatives in either Queens or Nassau since the decision.

Case 4 – *Merger of Chemical Bank New York Trust Company, New York City, and Long Island Trust Company, Garden City*, approved by N.Y. Superintendent of Banks, later denied by Federal Reserve Board (1962 Fed. Res. Bull. 548).

Chemical, with $4.4 billion in deposits and 113 domestic offices, sought to merge Long Island Trust Company (LIT), with deposits of $140 million and 14

offices in Long Island—12 in Nassau County and two in Suffolk County (*id.* at 549, 550). Chemical had already branched into Nassau County (*id.* at 550) and had 12 offices in the Borough of Queens, contiguous to Nassau (*Polk's Bank Directory*, Mar. 1962). The volume of Long Island business held by Chemical was about one-half that of LIT's business in Nassau and Suffolk (1962 Fed. Res. Bull. at 552). The Board noted:

> "More specifically, the location of LIT's main centers of activity in relationship to existing offices of Chemical indicates that there is a competitive relationship between the two banks. Four of the most important areas from which LIT obtains its business are Mineola, Garden City, Freeport, and Great Neck. Four branches of Chemical, operating in the Borough of Queens, are just across the Queens-Nassau County line. These branches are located at distances from 6 to 14 road miles from the four service areas of LIT. In general, then, Chemical has offices near LIT's major areas of operation. The whole area, on both sides of the County line, is highly developed and densely populated . . . . " (*Id.* at 552).

The Board's opinion called attention to the "changes in New York State law under the Omnibus Banking Act of 1960, which permit New York City banks to establish branches in Nassau County" (*id.* at 551), and stated, "the facilities of large New York City banks have become available, and presumably will become increasingly available, through the establishment by such banks of new branches in Nassau County . . . . " (*Ibid.*) The Board pointed out, "[i]t is to be expected that New York City banks, anticipating their future growth, would wish to

follow the trends in population[1] and business by extending their banking operations to such areas as Nassau County . . . " (*Id.* at 550). Chemical later increased its Nassau branches to 13 (Supr. Br. at 11), including 3 which were acquired by a 1963 merger of Bank of Rockville Centre Trust Co., with $43 million in assets at year-end 1962 (See *Kohn and Carlo* at 13). Thus, Chemical's post-denial growth did not result in any increase in the number of competitive alternatives available in Nassau County. In March of 1972, Chemical acquired Eastern National Bank of Long Island ($77 million in assets) with 6 offices in Suffolk County (*Moody's Bank & Finance Manual*, 1972; *Polk's Bank Directory*, March 1972). Subsequent to the decision, there has been no change in the number of competitive alternatives in either Nassau or Suffolk Counties as a result of that decision.

Case 5 – *Holding Company Affiliation Between Marine Midland Corporation, Buffalo, and Security National Bank of Long Island, Huntington*, approved by N.Y. Superintendent of Banks, later denied by Federal Reserve Board (1962 Fed. Res. Bull. 1597).

Marine Midland, with deposits of $2.5 billion, operated subsidiaries with 181 banking offices in 105 communities located throughout all of New York's nine banking districts (*id.* at 1599, 1602). Among the 11 offices of its

---

[1] New York City's population declined 1.4% between 1950 and 1960 compared to an increase of 93.3% in Nassau County's population. (*id.* at 550).

New York City-based subsidiary were 3 branches in Queens County, adjacent to Nassau County (*id.* at 1603). Security National, with $212 million in deposits, operated 8 offices in Nassau County and 25 offices in Suffolk County (*id.* at 1599).

Seven years after the Board's denial of this proposed affiliation, Midland acquired Tinker National Bank, with $92 million in assets and 9 offices in Suffolk County (*Kohn and Carlo* at 14). The Marine Midland organization now operates 15 offices in Suffolk County (*Polk's Bank Directory*, Mar. 1972). In 1970, Marine Midland New York acquired the Community Bank of Lynbrook in Nassau County (*Moody's Bank & Finance Manual*, 1972) and now has 5 offices in Nassau County (*Polk's Bank Directory*, Mar. 1972).

Case 6 – *Holding Company Formation Involving Morgan Guaranty Trust Company of New York, New York City; Manufacturers and Traders Trust Company, Buffalo; Lincoln Rochester Trust Company, Rochester; First Trust & Deposit Company, Syracuse; The National Commercial Bank and Trust Company of Albany; First-City National Bank of Binghamton, New York; and The Oneida National Bank and Trust Company of Central New York, Utica*, approved by New York State Banking Board, later denied by the Federal Reserve Board (1962 Fed. Res. Bull. 567).

The composition of the proposed holding company was to have been as follows (*id.* at 569-570):

Proposed Member Bank	No. of Offices	No. of Communities	Deposits *($ millions)*
Morgan Guaranty, New York City	5	1	3,410
Manufacturers & Traders Trust, Buffalo	43	21	452
Lincoln Rochester	26	15	377
First Trust, Syracuse	24	5 plus	183
Nat'l Commercial, Albany	33	25	311
First City, Binghamton	8	3 plus	86
Oneida Nat'l, Utica	13	4 plus	112
	152	74 plus	4,931

Since each of the 7 banks could have entered into the areas served by any of the other 6,, denial of the affiliation raised 42 cross-entry potential situations. Based on the size and geographic spread of each of the seven, one would expect—accepting the broad potential competitive thesis advanced by the former Superintendent—that many such cross-entries would have occurred, either by branching or establishment of *de novo* affiliates. In fact, in the ten years since denial of this affiliation, not one of the seven has done so. What did happen is the following: (1) Three of the banks became lead banks of new holding companies: Manufacturers and Traders Trust, Buffalo (First Empire State Corporation); Lincoln Rochester Trust Company, Rochester (Lincoln First Group, Inc.); and National Commercial Bank and Trust Company, Albany (First Commercial Banks, Inc.). (2) Two of the other banks joined one of the aforesaid holding companies: First Trust and Deposit Company, Syracuse joined First Commercial Banks, Inc.; and First-City National Bank, Binghamton, joined Lincoln First. (3) In 1967, Lincoln First acquired the $191 million deposit Lincoln National Bank and Trust Com-

pany of Central New York, based in Syracuse. (4) First Empire State Corporation recently acquired the $136 million deposit Hambro American Bank and Trust Company of New York City (*Moody's Bank & Finance Manual*, 1968, 1971 and 1972). *None of the above described merger activity increased at all the number of competitive alternatives available in any of the 74 or more communities previously served.*

Case 7 – *Merger of State Bank of Albany and Fulton County National Bank, Gloversville*, denied by N.Y. Superintendent of Banks (Press Release, New York State Banking Department, July 13, 1961).

"In the case of the proposed merger of Fulton County National Bank into State Bank of Albany, Mr. Root noted that State Bank of Albany now has a branch in Johnstown, immediately adjoining the City of Gloversville, and that it is presently in direct competition in the Johnstown-Gloversville area and elsewhere in Fulton County with the offices of Fulton County National Bank of Gloversville.

"The Superintendent of Banks stated that the resulting elimination of competition between these two banks would be substantial and would constitute a tendency towards monopoly in the market area. The Superintendent further indicated that the public in the Johnstown-Gloversville area already had available the services offered by State Bank of Albany as a result of the existence of its branch in Johnstown. Under the circumstances, the substantial elimination of competition which would have resulted from this merger weighed the balance towards disapproval." (Press Release, *supra*).

Clearly, this case was denied on the grounds of actual rather than potential competition. Subsequent to the

denial the State Bank of Albany has engaged in no further expansion in Fulton County, nor has Fulton County National established new branches either in the county or elsewhere (*Polk's Bank Directory*, Mar. 1972).

Case 8 – *Merger of Manufacturers and Traders Trust Company, New York City, and State Bank of Newfane*, denied by N.Y. Superintendent of Banks (Press Release, New York State Banking Department, April 21, 1961).

The *Kohn and Carlo*, study, *supra*, upon which the former Superintendent's brief is based, states (at 19):

> "This application was disapproved by the New York State Superintendent of Banks on April 21, 1961 on the basis of the elimination of existing competition and a tendency toward monopoly in the area. At the time, the Newfane bank was the last remaining independent bank headquartered in Niagara County, where the two largest banks in District Nine [one of which was Manufacturers and Traders Trust Company] had almost all the commercial bank offices . . . These banks, the only ones with offices within ten miles of Newfane, were in competition with the Newfane bank."

The nearest office of Manufacturers and Traders Trust was and still is in nearby Lockport (*American Bank Directory*, Spring, 1972). State Bank of Newfane was subsequently merged with another major bank (*Moody's Bank and Finance Manual*, 1972).

Case 9 – *Merger of County National Bank, Middletown, and National Bank of Port Jervis*, denied by Comptroller of the Currency (*Annual Report*, 1962, Comptroller of the Currency, p. 153).

"The proposal, if approved, would combine the [only] two banking offices operating in Port Jervis . . . " (*Id.* at 154).

Moreover the Comptroller's summary of the Attorney General's report states:

"To permit this merger would eliminate substantial competition between the merging banks, create banking monopoly in the town of Port Jervis and tend toward monopoly in the entire service area of the merging bank." (*Id.* at 154).

Case 10 – *Merger of Manufacturers and Traders Trust Company of Buffalo and Bank of Jamestown*, denied by N.Y. Superintendent of Banks (*Annual Report*, 1964, N.Y. Superintendent of Banks, p. 19).

Buffalo-based Manufacturers and Traders Trust Company, with total assets of $625 million, operated 45 offices, including 3 in the northern part of Chautauqua County (*id.* at 19, 21). Bank of Jamestown, with assets of $54 million, operated its 7 offices in the southern portion of Chautauqua County (*id.* at 19, 21). The two organizations' closest offices were about 26 miles apart (*Kohn and Carlo* at 18).

In 1969, subsequent to the denial, the Bank of Jamestown (then $77 million in assets) was acquired by Bankers Trust New York Corporation, with total assets of $8 billion at Dec. 31, 1968 (*Moody's Bank & Finance Manual*, 1970). The procompetitive effect cited by the former Superintendent's brief (at 14) is that "Jamestown bank . . . now competes more effectively with Manufacturers and Traders Trust Company in Chautauqua County." However, the closest office of Manufacturers and Traders Trust Company and Bank of Jamestown remain approximately 26 miles apart.

Case 11 – *Merger of Chemical Bank, New York City, and First National Bank in Yonkers,* denied by N.Y. Superintendent of Banks (*Annual Report*, 1965, N.Y. Superintendent of Banks, p. 25, and Statement of Superintendent of Banks accompanying Press Release, April 22, 1965).

First National Bank in Yonkers, with $96 million in deposits at mid-year 1964, had all of its 11 offices in Yonkers, Westchester County (Press Release, *supra*, at 3, 15). Prior to the proposed affiliation, Chemical, a large New York City Bank, had already branched into Westchester County and had acquired another Westchester County bank, First National Bank of Mt. Vernon, with $49 million in deposits and 4 offices at year-end 1963 (*id.* at 16). By mid-year 1964, prior to the proposed affiliation, Chemical had $53 million in deposits and 6 offices in Westchester County (*id.* at 14, 15). In Westchester County, which was deemed by the Superintendent to constitute a relevant market (*id.* at 14), Chemical's 3.9% share of total deposits would have given the merged organization 10.9% of total deposits. Subsequent to the denial, First National Bank of Yonkers merged with the $2 billion National Bank of North America (*Moody's Bank & Finance Manual*, 1972).

Case 12 – *Holding Company Affiliation Between BT New York Corporation and Liberty National Bank, Buffalo*, approved by N.Y. Superintendent of Banks, later denied by Federal Reserve Board (1967 Fed. Res. Bull. 769).

BT New York Corporation is a holding company whose lead bank, Bankers Trust Company of New York

City, had $4.5 billion in deposits at June 30, 1966 (*id.* at 770). BT New York Corporation's other three subsidiaries, all headquartered in eastern New York State, had combined deposits of $187 million (*ibid.*). Liberty National, headquartered in Buffalo held total deposits of $341 million at June 30, 1966, and operated 34 offices–28 in the Buffalo SMSA, 4 in northern Chautauqua County and 2 in Genesse County (*id.* at 771). The closest offices of any Bankers Trust subsidiary and Liberty were approximately 200 miles apart (*id.* at 770). Subsequently, in 1969, Bankers Trust Company acquired Bank of Jamestown in the southern part of Chautauqua County, with assets of $77 million, which competes in a quite separate market from Liberty National.[2] In 1971, Liberty combined with the $743 million deposit State Bank of Albany to form United Bank Corporation of New York (*Moody's Bank & Finance Manual*, 1972). Bankers Trust has not entered the Buffalo market, nor has any new competitor been established in any market as a result of the various permutations and combinations of these banks and the banks and banking organizations with which they subsequently became affiliated.

Case 13 – *Holding Company Affiliation Between Marine Midland Banks and First Westchester National Bank, New Rochelle,* denied by N.Y. State Banking Board (*Annual Report*, 1967, N.Y. Superintendent of Banks, p. 50).

---

[2]The former Superintendent's brief erroneously states that "Bankers Trust . . . now competes with Liberty Bank of Buffalo in Chautauqua County" (at 14-15). However, their closest offices are approximately 25 road miles apart (Liberty's Brockton office and Bankers Trust's Sherman office) (*Polk's Bank Directory*, Mar. 1972).

At year-end 1966, the Marine Midland group, with deposits of $3.8 billion (*Moody's Bank & Finance Manual*, 1968), operated 15 offices in New York City (*Polk's Bank Directory*, Mar. 1967). First Westchester, with deposits of $124 million (*Moody's Bank & Finance Manual*, 1968) had 17 offices in Westchester County, including 7 in New Rochelle (*Annual Report*, 1967, N.Y. Superintendent of Banks, at 52, 54, 57), which is but two or three miles from the New York City border, and one in Putnam County (*Polk's Bank Director*, Mar. 1967). Marine Midland had the legal capacity to branch into Westchester County through three subsidiaries (*Annual Report*, 1967, N.Y. Superintendent of Banks, at 54). In fact, the Marine Midland group, through Marine Midland Bank of Southeastern New York did later branch into Westchester County, where it currently operates 7 branches (*Polk's Bank Directory*, Mar. 1972).

Case 14 – *Affiliation Between Charter New York Corporation and Central Trust Company, Rochester*, approved by N.Y. Supervisor of Banks, later denied by Federal Reserve Board (1968 Fed. Res. Bull. 925).

Charter New York Corporation controlled four banks, including Irving Trust Company, had total deposits of $3.5 billion, and operated 40 offices at December 30, 1967 (*ibid.*). Central Trust had deposits of $191 million and operated 14 offices–seven offices in Rochester, five more in Monroe County in the Rochester suburbs, and one each in Wayne County and Steuben County, 17 miles east and 50 miles south, respectively, of Rochester (*id.* at 925, 926). In 1970, Charter substituted a modified proposal to the Board, which was approved (*In re Charter New York Corp.*, 1970 Fed. Res. Bull. 294), whereby

Charter acquired Central Trust (now operating 16 offices) but "spun off" the business and assets of four Central Trust banking offices (three in Rochester and one in Wayne County) to a new bank, which was thereupon acquired by Bankers Trust New York Corporation.

Case 15 – *New Holding Company (First Empire State Corporation) Affiliation Involving Manufacturers and Traders Trust Company, Buffalo; First Trust & Deposit Company, Syracuse; National Commercial Bank and Trust Company, Albany; and First National Bank in Yonkers*, approved by N.Y. State Banking Board, later denied by Federal Reserve Board (1969 Fed. Res. Bull. 738).

The affiliation included First Yonkers, with $122 million in deposits and 11 offices in Yonkers, Westchester County, and three upstate organizations with substantial branching systems: (1) Manufacturers and Traders Trust Company, Buffalo, with $854 million in deposits and 67 offices (2) First Trust and Deposit Company, Syracuse, with $263 million in deposits and 31 offices; and (3) National Commercial Bank & Trust Company, Albany, with $712 million in deposits and 54 offices (1969 Fed. Res. Bull. at 739). The closest offices of any two of the banks were located about 50 miles apart (*ibid.*).

Subsequently, three of the four have joined upstate holding companies and the fourth has been merged into a multi-billion dollar bank. Specifically, in 1969 Manufacturers & Traders Trust became the lead bank of First Empire State Corp., which recently acquired Hambro American Bank & Trust Company in New York City (*Moody's Bank & Finance Manual*, 1972). In 1971,

National Commercial and First Trust and Deposit became the lead banks of a new holding company, First Commercial Banks, Inc. (*ibid.*). The First National Bank in Yonkers meanwhile was merged into the National Bank of North America, a $2.1 billion deposit bank, which, in turn, is 98% owned by CIT Financial Corp., a diversified banking, financing, insurance, manufacturing and merchandising conglomerate (*ibid.*).

None of the three resulting organizations appears to have entered into the banking markets of either of the other two by new charter or by branching. The Hambro American acquisition of First Empire brings the latter into competition with National Bank of North America which had acquired First National of Yonkers, but this did not change the number of competitors or the number of offices in New York City, the point of new contact.

Case 16 – *Affiliation of Bankers Trust New York Corporation and Union National Bank of Troy*, denied by N.Y. State Banking Board (*Annual Report*, 1970, N.Y. Superintendent of Banks, p. 74).

Bankers Trust, with $8.2 billion in total deposits at year-end 1969 (*Moody's Bank & Finance Manual*, 1972), had subsidiary banks operating 140 offices, including First Trust Company of Albany, among whose 16 offices were 9 in Albany County, a part of the Albany SMSA (*id.* at 78; *Polk's Bank Directory*, Sept. 1969). Union National had $62 million in assets and 6 offices in Rensselaer County (*ibid.*), also part of the Albany SMSA. The closest offices of the two organizations were but 5 miles apart; all 9 Banker's Trust offices and 5 of the 6 Union National offices were encompassed within a radius of about 7 miles from a point midway between Albany

and Troy (*id.* at 78 and *Polks Bank Directory*, Sept. 1969). Bankers Trust was free to branch into Rensselaer County (Superintendent's 1970 *Annual Report, supra*, at 80). Subsequent to the denial of the proposed affiliation, Charter New York Corporation (lead bank, Irving Trust Company), with $5.3 billion in deposits at year-end 1970 (*Moody's Bank & Finance Manual*, 1972), established a new bank in Albany (one office) which was merged with Union National, the net effect of which was to turn $62 million Union National into a subsidiary of a $5.3 billion deposit organization and to add one office in Albany County to the acquired Union National operation (*Moody's Bank & Finance Manual*, 1972), increasing *pro tanto* the extent of direct competition which concededly already existed between Bankers Trust and the former Union National operation (Superintendent's *Annual Report, supra*, at 78). Meanwhile, Bankers Trust's First Trust Company of Albany has added two more offices in Albany County, but has not branched into Rensselaer County (*Polk's Bank Directory*, Mar. 1972).

Case 17 – *Holding Company Affiliation of Charter New York Corp. and Hempstead Bank, Hempstead*, denied by State Banking Board (*Annual Report*, 1970, N.Y. Superintendent of Banks, p. 111).

The lead bank of Charter New York Corp., Irving Trust Company, was one of New York City's largest banks, with assets of $5.2 billion at the end of 1969 (*id.* at 112). Another Charter subsidiary, the $75 million Scarsdale National Bank and Trust Company, was located in Westchester County. Hempstead Bank had $172 million in assets and 22 offices–21 in Nassau County and one in Suffolk County (*id.* at 111). The nearest offices of the two organizations were 18 miles apart (*id.* at 117).

In 1972, Charter acquired the Bank of Babylon, with $64 million in assets at Dec. 31, 1971 (*Moody's Bank & Finance Directory*, 1972) and 7 offices in Suffolk County (*Polk's Bank Directory*, Mar. 1972). Charter has not entered Nassau County, whereas Hempstead Bank established only one additional office in Suffolk. The Hempstead Bank remains primarily in Nassau while all of Charter's Long Island offices are in Suffolk (*Polk's Bank Directory*, Mar. 1972). There has been no increase in the number of competitive alternatives in any county resulting out of the denial of the application.